Sparta Corporation *and* United Mine Workers of America, District 17, Sub-District II, AFL–CIO. Case 9-CA-36280

May 24, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND BRAME

Upon a charge filed by the Union on September 21, 1998, the General Counsel of the National Labor Relations Board issued a complaint on January 29, 1999, against Sparta Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 9, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On April 14, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 23, 1999, notified the Respondent that unless an answer were received by March 31, 1999, a Motion for Summary Judgment would be filed. On March 25, 1999, the Respondent's counsel advised the General Counsel in a telephone conversation that the Respondent would not file an answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Switzer, West Virginia, has been engaged in the business of mining coal. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Switzer, West Virginia facility goods valued in excess of $50,000 from Mine Exchange, Inc., located within the State of West Virginia, which, in turn, purchased and received those goods from points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The employees of the Respondent described in article 1A of the National Bituminous Coal Wage Agreement of 1998 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about September 1996, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Respondent has recognized the Union as the representative. This recognition has been embodied in successive collective-bargaining agreements between the Respondent and the United Mine Workers of America on behalf of its locals and districts, including the Union, the most recent of which is effective from January 1, 1998 to December 31, 2002. At all times since about September 1996, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about July 31, 1998, the Respondent ceased providing its employees with health benefits pursuant to article XX of the collective-bargaining agreement described above and, at all times thereafter, has failed to pay medical claims for which it is responsible under that agreement.

Since on about July 31, 1998, by the conduct described above, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement. These health benefits relate to wages, hours, and other terms and conditions of employment of the unit employees, and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the above-described conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct, and without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing, since July 31, 1998, to provide health benefits to unit employees pursuant to article XX of the 1998–2002 collective-bargaining agreement and failing to pay their medical expenses, we shall order the Respondent to honor the terms of the agreement, and to make whole its unit employees by making all contractually required health insurance payments or contributions, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's failure to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Sparta Corporation, Switzer, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Mine Workers of America, District 17, Sub-District II, AFL–CIO, the exclusive representative of the employees of the Respondent described in article 1A of the National Bituminous Coal Wage Agreement of 1998, by failing to provide health benefits to unit employees pursuant to article XX of the 1998–2002 collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of the 1998–2002 collective-bargaining agreement by making all contractually required health insurance benefits payments or contributions retroactive to July 31, 1998, and make whole the unit employees for any loss of benefits or expenses ensuing from its failure, since about July 31, 1998, to provide health benefits to unit employees pursuant to article XX of the agreement, as set forth in the remedy section of this Decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Switzer, West Virginia, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 31, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 24, 1999

John C. Truesdale	Chairman
Sarah M. Fox,	Member
J. Robert Brame III,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with United Mine Workers of America, District 17, Sub-District II, AFL–CIO, the exclusive representative of our employees described in Article 1A of the National Bituminous Coal Wage Agreement of 1998, by failing to provide health insurance benefits to unit employees pursuant to article XX of the 1998–2002 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of the 1998–2002 collective-bargaining agreement by making all contractually required health insurance benefits payments or contributions retroactive to July 31, 1998, and WE WILL make whole the unit employees for any loss of benefits or expenses ensuing from our failure, since about July 31, 1998, to provide health benefits to unit employees pursuant to article XX of the agreement, with interest.

SPARTA CORPORATION